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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,730	03/15/2002	Dennis Stamires	040864.04	1326

7590 06/20/2003

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EXAMINER
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NGUYEN, CAM N

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 06/20/2003

*[Handwritten signature]*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/042,730

Applicant(s)

Stamires et al.

Examiner

Cam Nguyen

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 15, 2002 (a continuation application)
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4, 5, and 9-25 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 5, and 9-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 1 6) ☐ Other:

Art Unit: 1754

## DETAILED ACTION

### *Claim Objections*

1. Claims 15 & 23 are objected to because of the following informalities:

A. In claim 15, line 3, "is subjected" should be deleted.

B. In claim 23, line 7, "aqueous" should be --aqueous--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112 (Second paragraph)*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-11 & 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Claim 9, line 2, recites the limitation "the reactor". There is insufficient antecedent basis for this limitation in the claim.

B. Claim 10, line 2, recite the limitation "an aluminum source slurry". There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 1754

C. Claim 11, line 2, recite the limitation "a magnesium source slurry". There is insufficient antecedent basis for this limitation in the claim.

D. Regarding claim 13, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 1754

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 4-5 & 9-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,440,887 B1 (hereinafter Patent '887). Although the conflicting claims are not identical, they are not patentably distinct from each other because: it is inherent that the claimed process and the process disclosed in Patent '887 are the same in view of the recitation of "other alumina sources can be fed to the reactor" at col. 10, claim 4 of Patent '887, and wherein "other alumina sources" suitable for the process are those shown at col. 6, lines 24-29 of Patent '887, which includes all of the aluminum sources being claimed.

6. Claims 4-5 & 9-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,171,991 B1 (hereinafter Patent '991). Although the conflicting claims are not identical, they are not patentably distinct from each other because: it is inherent that the claimed process and the process disclosed in Patent '991 are the same in view of the recitation of "the aqueous suspension further comprises at least one alumina source in addition to the at least aluminum trihydrate and a thermally treated form of aluminum trihydrate" at col. 10, claim 4 of Patent '991, and wherein "other aluminum sources besides aluminum trihydrate" suitable for the process are those shown at col. 6, lines 35-41 of Patent '991, which includes all of the aluminum sources being claimed.

Art Unit: 1754

***Allowable Subject Matter***

7. Claims 4-5 & 9-25 are not being rejected under the art rejection because they contain allowable subject matter. The following is the reasons for allowance of the claimed subject matter.

The prior art does not disclose or fairly suggest a process of preparing anionic clays which requires an aluminum source comprising two types of aluminum-containing compounds as specified in claims 16 & 23.

There is no motivation to combine the teachings of the references together.

***Citations***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stamires et al. (US Pat. 6,333,290 B1), van Broekhoven (US Pat. 4,946,581), Miyate et al. (US Pat. 3,879,523), Miyata et al. (US Pat. 3,879,525), Miyata et al. (US Pat. 3,796,792), Misra (US Pat. 4,656,156), Misra (US Pat. 4,904,457), Drezdson et al. (US Pat. 4,843,168), Drezdon (US Pat. 4,774,212), Woltermann (US Pat. 4,454,244), Reichle (US Pat. 4,458,026), Miyata et al. (US Pat. 4,351,814), Bedford et al. (US Pat. 4,051,072), Hickson (US Pat. 3,844,979), Hickson (US Pat. 3,844,978), Osment et al. (US Pat. 3,222,129), Vierheilig (U.S Pat. 6,028,023), Bhattacharrya (U.S Pat. 5,246,899), Swamy et al. (U.S Pat. 5,407,652), Schutz et al.

\*Art Unit: 1754

(U.S Pat. 5,153,156), Atkins et al. (U.S Pat. 5,112,784), Pinnavaia et al. (WO 91/10505),  
Pinnavaia et al. (WO 91/18670), Bhattacharyya et al. (EP 0 536 879 A1) are cited for related art.

***Conclusion***

9. Claims 4-5 & 9-25 are pending. Claims 4-5 & 9-25 are rejected. No claims are allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cam Nguyen, whose telephone number is (703) 305-3923. The examiner can normally be reached on M-F from 8:30 am. to 6:00 pm, with alternative Monday off.

The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (before finals) and (703) 872-9311 (after-final).


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Cam Nguyen

Patent Examiner

Art Unit: 1754

Nguyen/cnn 

June 13, 2003